

AFFIDAVIT OF COUNSEL

NOW COME **HYMAN G. DARLING**, **GINA M. BARRY**, and **TODD C. RATNER** all of the Commonwealth of Massachusetts, and hereby depose and state that:

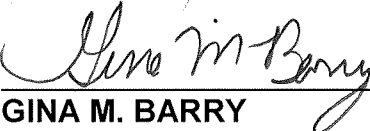
1. We are all attorneys in good standing, licensed to practice in the Commonwealth of Massachusetts, with a principal place of business in Springfield, Massachusetts.
2. A significant part of our law practice involves assisting elders with their estate planning and care planning and applications. Approximately 30% of our practice involves advising elders on long-term care planning and MassHealth applications. We have all attended many administrative fair hearings during the past 20 years practicing in elder law.
3. Over the past years, denial notices relative to MassHealth applications have been received.
4. In all instances, the denials did not have any specific reason or the denial except "excess assets" and referred to 130 C.M.R. Denial notices routinely are inconclusive as to the specific reason for the denial.
5. As a result, we often contacted the case worker who identified the assets, which usually consisted of the assets held in Irrevocable Trusts.
6. In all cases, we have had to request that a hearing be held relative to the further clarification of the denial notice and to attempt to have the trust approved at the administrative level.
7. In each case, the Memorandum from counsel representing MassHealth was not produced until the hearing and then only via the caseworker who had the Memorandum in the file.
8. In many cases, a copy of the complete file was requested from the case worker, but we were told that the Memorandum was not permitted to be distributed prior to the hearing.
9. At the time of the hearing, we were not able to present our case since we had no knowledge as to the specific reasons of the denial of the Medicaid application; therefore, the record must stay open for weeks until such time as a response could be timely prepared and filed.
10. This delay only causes further time of counsel, the case worker, and hearing officer since nothing is accomplished at the time of the hearing.

11. A denial notice with specificity could have been issued at the time of the denial, and the Memorandum could be provided to the applicant and counsel with sufficient time prior to the hearing so that a proper response may be prepared and appropriate questions can be asked of the case worker at the time of the hearing thereby alleviating further delay.
12. In years past, it was permitted to have communication with counsel for MassHealth and have a dialogue with the supervisor of the office so as to try to eliminate hearings.
13. It is indeed unfortunate that we cannot have a proper dialogue with MassHealth case workers and counsel so as to have a meaningful discussion prior to requiring the hearings to be held, especially when many of the same trusts are being utilized in numerous cases and often, it is the same trust being reviewed, but by different hearing officers.

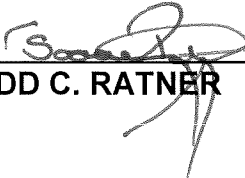
SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 17th OF MAY, 2018.



HYMAN G. DARLING



GINA M. BARRY



TODD C. RATNER